

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

INDIAN HARBOR INSURANCE
COMPANY,

Plaintiff,

v.

Case No. 23-cv-15547

MCHUGH/CLARK, A JOINT VENTURE;
BIT WOLF POINT WEST INVESTORS,
LLC; and YUANDA USA CORPORATION,

Defendants.

JOINT STIPULATION TO DISMISS PURSUANT TO RULE 41(a)(1)(A)

Plaintiff, Indian Harbor Insurance Company (“Indian Harbor”), Defendant, McHugh/Clark (“McHugh/Clark”), a joint venture, Defendant BIT Wolf Point West Investors, LLC (“BIT WPW”), and Defendant Yuanda USA Corporation (“Yuanda”) (collectively, the “Parties”), by and through their attorneys, hereby stipulate as follows in accordance with Fed. R. Civ. P. 41(a)(1)(A):

1. Indian Harbor initiated this declaratory judgment action (“Action”) on November 1, 2023 by filing a complaint [ECF #1] (the “Complaint”) seeking a declaration of its rights and obligations under commercial general liability insurance policies and excess liability policies issued to Yuanda as the Named Insured (collectively, the “Indian Harbor Policies”) with respect to an underlying lawsuit filed by BIT WPW (the “Underlying Lawsuit”).

2. Indian Harbor alleged in its complaint that McHugh/Clark was a joint venture comprised of James McHugh Construction Company and Clark Construction Group – Chicago LLC. Indian Harbor further alleged that James McHugh Construction Company was a corporation organized under the laws of Illinois with its principal place of business in Illinois. In

addition, Indian Harbor alleged that Clark Construction Group – Chicago LLC is an Illinois limited liability company whose sole member is Clark Construction Group, LLC (a Maryland limited liability company), whose sole member in turn is Clark Construction LLC (a Maryland limited liability company).

3. Indian Harbor alleged that the sole members of Clark Construction LLC were domiciled in Maryland, Michigan, and Virginia, and that therefore this Court had proper jurisdiction under 28 U.S.C. § 1332(a) because there was a complete diversity of citizenship between Indian Harbor (a Delaware company with its principal place of business in Connecticut) and McHugh/Clark (having the citizenship of the Maryland, Michigan, and Virginia members of Clark Construction LLC and Illinois (because James McHugh Construction Company is an Illinois company with its principal place of business in Illinois)), as well as the other defendants to this action.

4. The Parties have agreed to extensions for McHugh/Clark and BIT WPW to answer the Complaint, which dates have not yet passed. Yuanda answered the Complaint on January 12, 2024 [ECF #20].

5. On or about January 18, 2024, McHugh/Clark’s counsel first became aware of information indicating that one of the individual members of Clark Construction LLC is domiciled in Delaware (the “Delaware Member”). McHugh/Clark’s counsel promptly notified Indian Harbor upon his receipt thereof.

6. Indian Harbor and McHugh/Clark requested additional time to investigate the import of this information and, in particular, the impact it had on this Court’s subject matter jurisdiction. As a result, McHugh/Clark moved for two extensions by agreement of its deadline to file a responsive pleading [ECFs #25 and 29], each of which were granted by this Court [ECFs

#26 and 30].

7. Based on the information provided to Indian Harbor, complete diversity between Indian Harbor and all Defendants, which formed the basis for this Court's jurisdiction in this Action, does not exist.

8. Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and 41(a)(1)(B), all Parties to this Action hereby stipulate to the dismissal, without prejudice, of Indian Harbor's Complaint in this Action.

9. A copy of this stipulation shall be filed with this Court.

Dated: February 9, 2024

INDIAN HARBOR INSURANCE
COMPANY

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that, on February 9, 2024, I electronically filed the foregoing document, Joint Stipulation to Dismiss, via this Court's CM/ECF system, which will provide service on all parties of record.

/s/ Thomas D. Ferguson
Thomas D. Ferguson